IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 478 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANJLI CHETNA ALIAS PITAMBAR PARMAR

Versus

DHIREN PRAGJIBHAI TANK

Appearance:

MR RR TRIVEDI for Petitioner No. 1

MR BHAVESH P TRIVEDI for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 23/06/2004

ORAL JUDGEMENT

1. Heard learned Advocate Mr.Bhavesh Trivedi for the applicant. Opponent is served.

2. This is an application filed by the applicant for transferring the Hindu Marriage Petition No. 2 of 2004 pending before the Joint Civil Judge (SD), Porbandar to the Court of Civil Judge (SD) at Rajkot. Present applicant is wife while opponent is husband. On account of disputes in their married life, both of them at present resides separately since last two years. At present the applicant is residing at Rajkot while opponent her husband is residing at Porbandar. The present applicant preferred Hindu Marriage Petition No. 94 of 2002 in the Court of Civil Judge (SD) at Rajkot for decree of divorce as per the provisions of the Hindu Marriage Act. The said Hindu Marriage Petition is still pending for final disposal. In the said Hindu Marriage Petition, the applicant also filed an application for interim maintenance. During pendency of said Hindu Marriage Petition No. 94 of 2002 before the Civil Judge (SD) at Rajkot, present opponent - husband also filed one Hindu Marriage Petition No.2 of 2004 in the Court of Joint Civil Judge (SD), Porbandar as per the provisions of Section 9 of the Hindu Marriage Act for a decree of restitution of conjugal rights. Alternatively, for obtaining a decree of judicial separation.

3. It is the case of the applicant that she is residing at Rajkot at her parental home. The applicant is having six sisters along with widow mother. Financial condition of the family is very poor and so far as the applicant is concerned she has no other income except the maintenance amount granted by the Court. Though according to the applicant, the amount of maintenance is not paid regularly to her and opponent is in huge arrears. Porbandar is about 200 kms away from Rajkot. It would be very difficult with poor financial and other social condition of the applicant, to attend the court at Porbandar on each date in HMP No.2 of 2004 filed by husband opponent. It is also the case of the applicant that otherwise Hindu Marriage Petition No. 2 of 2004 is filed by the husband at Porbandar Court is a counter blast and afterwards filling of the Hindu Marriage Petition No. 94 of 2002 by the applicant. Apprehension is also expressed that if applicant fails to remain present in the proceedings at Porbandar, the said proceedings are likely to be proceeded ex parte. On each date, she will have to travel through public transport in early morning and she would be required to have an escort of some male members causing the expenses double. It is also urged that it is otherwise just and proper if both the proceedings are tried jointly.

4. In view of the above grounds urged by the applicant wife it appears that Hindu Marriage Petition No. 2 of 2004 pending before the Joint Civil Judge (SD), Porbandar is required to be transferred to the Court of Civil Judge (SD) at Rajkot where Hindu Marriage Petition No. 94 of 2002 is pending. The powers conferred by Section 24 is required to be exercised in favour of the applicant because considering comparative hardship even by ordering transfer, husband opponent is likely to suffer lesser hardship than applicant - wife. If transfer is not ordered, the wife - applicant is likely to suffer greater hardship than opponent husband.

5. In the result, this Application is allowed. Hindu Marriage Petition No. 2 of 2004 pending before the Joint Civil Judge (SD), Porbandar filed by opponent is directed to be transferred to the Court of Civil Judge (SD) at Rajkot where Hindu Marriage Petition No. 94 of 2002 filed by the applicant is pending. Learned Civil Judge (SD) at Porbandar is directed to transmit Record and Proceedings of Hindu Marriage Petition No. 2 of 2004 to Civil Judge (SD) Rajkot immediately through the concerned District Judges. On receiving the Record and Proceedings of Hindu Marriage Petition No.2 of 2004 from the court of Joint Civil Judge (SD), Porbandar, the same shall be registered, dealt with and disposed of by Civil Judge (SD), Rajkot in accordance with law. Rule is made absolute

(J.R. Vora, J.)

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